

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RYAN MASTERS,

Defendant.

Case No. 2:12-cr-00145-MMD-GWF

REPORT AND
RECOMMENDATION

This matter is before the Court on the Government's Motion to Strike Defendant's Improperly Filed Notice of Appeal (#362), filed March 7, 2016. Defendant filed an Opposition (#364) on March 14, 2016.

Local Rule IA 10-6(a) provides that "[a] party who has appeared by attorney cannot while so represented appear or act in the case." Defendant filed a Notice of Appeal (#361) *pro se*. However, Defendant is currently represented by Kevin Stolworthy, Esq. The Government argues that for this reason, the Court should strike Defendant's Notice of Appeal and give it no consideration. *See Motion (#362)*. The Court agrees.¹ Accordingly,

IT IS HEREBY RECOMMENDED that the Government's Motion to Strike Defendant's Improperly Filed Notice of Appeal (#362) be **granted**.

IT IS FURTHER RECOMMENDED that the Clerk of the Court be instructed to strike Defendant's "Notice of Appeal" (#361) from the record.

...

¹ Defendant's Opposition (#364) argues that the Court lacks jurisdiction to rule on the instant motion. However, the Court finds that the cases Defendant cited are inapposite to the issue in the Government's motion. "[W]here an appeal is taken from a judgment which does not finally determine the entire action, the appeal does not prevent the district court from proceeding with matters not involved in the appeal." *Britton v. Co-op Banking Group*, 916 F.2d 1405, 1411 (9th Cir.1990); *see also Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982) (notice of appeal divests the district court of "control over those aspects of the case involved in the appeal").

NOTICE

Under Local Rule IB 3-2, any objection to this Report and Recommendation must be in writing and filed with the Clerk of the Court within fourteen (14) days. Appeals may be waived due to the failure to file objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). Failure to file objections within the specified time or failure to properly address and brief the objectionable issues waives the right to appeal the District Court's order and/or appeal factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

DATED this 28th day of March, 2016.



GEORGE FOLEY, JR.
United States Magistrate Judge